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8 **UNITED STATES DISTRICT COURT**
9 **DISTRICT OF NEVADA**

10 CHOCOLATE MAGIC LAS VEGAS, LLC,)

11 Plaintiff(s),)

12 vs.)

13 BLAIR ELLIOT FORD, JR., et al.,)

14 Defendant(s).)
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Case No. 2:17-cv-00690-GMN-NJK

ORDER

16 On March 29, 2017, Defendant Wix-Ingling filed an answer. Docket No. 14. On April 17, 2017,
17 Defendant Ford filed a motion to dismiss. Docket No. 21. The remaining two defendants have not yet
18 appeared. Pursuant to the local rules, the deadline for filing a discovery plan was May 13, 2017. *See*
19 Local Rule 26-1(a). When no discovery plan was filed by that date, the Court ordered the parties to file
20 a discovery plan or to file a status report explaining why one should not be filed. Docket No. 31. The
21 parties have now filed a status report indicating that discovery is stayed in light of Defendant Ford's
22 motion to dismiss because it was brought pursuant to Nevada's Anti-SLAPP statute. *See* Docket No.
23 35 (discussing N.R.S. 41.660(3)(e)(1)).

24 The Court hereby **ORDERS** the parties to file, no later than June 1, 2017, a supplement
25 addressing the following: (1) as a general matter, whether the stay provision cited applies to diversity
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1 cases in federal court;¹ (2) if so, whether federal courts have created any exceptions to that stay
2 requirement based on the circumstances of a particular case; and (3) whether the stay provision cited
3 mandates a stay of discovery against non-moving defendants who have answered the complaint. To the
4 extent the parties agree on these issues, they may file a joint response. Otherwise, they shall file separate
5 responses. In either event, the response(s) shall not exceed five pages.

6 IT IS SO ORDERED.

7 DATED: May 25, 2017

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9 NANCY J. KOPPE
United States Magistrate Judge

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22 ¹ The Court is aware that there is debate among Ninth Circuit judges as to whether it should
23 reconsider its precedent that state anti-SLAPP laws should be applied by federal courts sitting in diversity
24 as a general matter. *See, e.g., Travelers Cas. Ins. Co. of Am. v. Hirsh*, 831 F.3d 1179, 1182-86 (9th Cir.
25 2016) (Kozinki, J., concurring) (arguing that state anti-SLAPP laws should not apply under *Eerie*, but
26 finding panel bound by previous decisions to the contrary); *id.* at 1186 (Gould, J., concurring) (same). The
27 undersigned is seeking only the parties' positions as to whether the Nevada stay provision in particular must
28 be applied in federal diversity cases. *Cf. Metabolic Research, Inc. v. Ferrell*, 693 F.3d 795, 801-02 (9th Cir.
2012) (despite recognizing the parallel provision that discovery must be stayed pending any appeal from the
ruling on the motion to dismiss, finding that immediate appeal of order denying motion to dismiss was
improper and that any harm in proceeding with the case could be redressed through an award of costs and
fees).